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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re the Marriage of NAMRATA LANDGE and SHREYAS AHIR	
NAMRATA LANDGE, Respondent, v. SHREYAS AHIR, Appellant.	A164150 (Alameda County Super. Ct. No. HF18912753)

In this dissolution action, Shreyas Ahir (Husband) appeals following the trial court's bifurcated judgment on the division of certain real property. We agree that the trial court improperly characterized the property as community property, and reverse and remand.

BACKGROUND[1]

Husband and respondent Namrata Landge (Wife) married in December 2013. In October 2014, the marital residence was purchased. The down payment was paid with $74,496 of Husband's separate property. The deed was in Husband's name only and Wife signed a quitclaim deed.[2] Wife testified Husband told her that, since she had recently immigrated and did not have a social security number, she could not be on the title but he would add her name later. She also testified Husband pressured her to sign a document at the title company, presumably the quitclaim deed.

Wife filed for divorce in July 2018. The marital status was bifurcated from the division of property, and the marriage was terminated in December 2019.

A trial on reserved issues, including the characterization of the marital residence, was held in September 2021. The trial court ruled the home was presumptively community property because it was purchased during the marriage and, crediting Wife's testimony, set aside the quitclaim deed. The

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[1] Wife filed a motion to strike Husband's appendix, arguing it contains improperly included records and superfluous records not relevant to the issues on appeal. Husband filed an opposition to the motion. We need not decide whether Husband improperly included certain records because the challenged records are not necessary to our resolution of this appeal. While we agree that the substantial appellant's appendix appears largely unnecessary to our resolution of the discrete issue on appeal, we exercise our discretion to excuse the inclusion of any superfluous records, and therefore deny the motion to strike.

[2] We grant Husband's unopposed request for judicial notice of the recorded grant deed. (*San Francisco CDC LLC v. Webcor Construction L.P.* (2021) 62 Cal.App.5th 266, 281, fn. 5 ["Judicial notice may be taken of the existence and facial contents of recorded real property records where, as here, the authenticity of the document is not challenged."].)

court divided the approximate equity in the home between the parties, with reimbursement to Husband for his $74,496 separate property down payment. The court issued judgment on this and other remaining reserved issues.[3] This appeal followed.

DISCUSSION

I. *Appealability*

Wife argues Husband's appeal should be dismissed as "premature given the many remaining issues to be determined," which Wife does not identify. The appealed-from order was the final resolution of the reserved, bifurcated issues. "[I]t has long been established that severable portions of a judgment may be separately appealed, particularly in dissolution cases." (*In re Marriage of King* (2000) 80 Cal.App.4th 92, 116.) The order is appealable.

II. *Characterization and Division of the Marital Residence*

The trial court found Husband contributed approximately $74,000 of his separate property to the down payment. Husband argues that under *In re Marriage of Bonvino* (2015) 241 Cal.App.4th 1411 (*Bonvino*), he has a separate property interest in the marital residence in proportion to his separate property contribution. We agree.

In *Bonvino,* the home was purchased with a down payment of the husband's separate property and a loan relying on community property. (*Bonvino, supra,* 241 Cal.App.4th at pp. 1418–1419.) The deed was in the husband's name only and the wife signed a quitclaim deed for the property; she testified the husband told her this was necessary because of her credit card debt and she would be added to the title after close of escrow. (*Id.* at p. 1419.) The mortgage payments were paid from community funds. (*Ibid.*)

[3] Husband does not challenge the trial court's ruling on any other issue on appeal.

The trial court found that the property was presumptively community property and the husband failed to rebut the presumption; the court also credited the wife's testimony about the quitclaim deed and set it aside. (*Id.* at pp. 1421–1422.) The court awarded the husband reimbursement for the contributions from his separate property. (*Id.* at p. 1422.)

The Court of Appeal began its analysis by noting the presumption that property acquired during marriage is community property (Fam. Code,[4] § 760) could be rebutted if it were traceable to a separate property source. (*Bonvino, supra,* 241 Cal.App.4th at pp. 1422–1423.) The house was traceable to both separate and community funds: the husband's separate property for the down payment, and loan proceeds from a loan relying on community property. (*Id.* at p. 1423; see also *ibid.* ["The character of property acquired on credit is determined by whether the lender intended to rely on separate or community property."].)

The court turned next to whether the character of either the separate or community property had changed. (*Bonvino, supra,* 241 Cal.App.4th at p. 1424.) The court concluded that, under current law, the character of property could be changed only by compliance with the transmutation requirements of section 852, which require an express writing.[5] (*Id.* at p. 1428.) No such express writing existed for either the husband's separate property down payment or the community property loan proceeds (in light of the trial court's finding setting aside the quitclaim deed). (*Id.* at p. 1430.)

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[4] All undesignated section references are to the Family Code.

[5] Section 852, subdivision (a), provides, "A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected."

Finally, the court discussed the statutory reimbursement provision, section 2640, which provides for reimbursement of separate property contributions to the community upon division of the community estate; the reimbursement, however, does not include any appreciation, which instead goes to the community. (*Bonvino, supra,* 241 Cal.App.4th at pp. 1431–1432.)[6] The Court of Appeal held, "Section 2640 does not purport to apply to separate property used during marriage to acquire an asset that retains its character as separate property. In order for section 2640 to apply, the asset purchased during marriage must be characterized as community property, and in order for separate property to become community property, the transmutation provisions must be satisfied." (*Id.* at p. 1433.) In other words, "the transmutation provisions of section 852 must be satisfied to change the character of separate property to community property before the reimbursement provisions of section 2640 apply." (*Id.* at p. 1432.)

The court concluded that, since no transmutation changed the character of the property interests in the family home, "both separate and community property interests were established in the property" and the property should be divided "on a pro rata basis in proportion to the separate and community funds invested in the property." (*Bonvino, supra,* 241 Cal.App.4th at pp. 1434, 1426.) "The separate property share is the equity paid from separate property plus the appreciation attributable to separate property. [Citation.] ... The community's share is the equity paid by

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[6] Section 2640, subdivision (b), provides, "In the division of the community estate under this division, ... the party shall be reimbursed for the party's contributions to the acquisition of property of the community property estate to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values ...."

community funds and the appreciation attributable to community funds." (*Id.* at p. 1427 [citing *In re Marriage of Moore* (1980) 28 Cal.3d 366].)

We agree with Husband that the material facts in this case are indistinguishable from those in *Bonvino.* The trial court found Husband contributed separate property to the down payment. The trial court impliedly found the loan proceeds relied on community property and mortgage payments were paid for by the community, and Husband does not contend otherwise on appeal. The marital home was therefore traceable to both separate and community property. The trial court set aside Wife's quitclaim deed; therefore, no express writing satisfied the transmutation requirements to change the character of either the separate or the community property.[7] Under *Bonvino,* the property should be divided in proportion to the separate and community contributions.

Wife argues the trial court's characterization of the marital home as community property was supported by substantial evidence. The following analysis in *Bonvino* applies here: "We conclude the trial court's finding that the [home] is community property is not supported by substantial evidence. The evidence shows the home was purchased with a down payment from husband's separate property and loan proceeds attributable to the community. Husband did not sign an express written declaration transmuting his separate property to community property as required to change the character of the property under section 852. Therefore, his contribution to the purchase of the [home] maintained its separate property character and did not become community property. The requirements of the

[7] Although Husband's opening brief appears to challenge the portion of the trial court's order setting aside the quitclaim deed, Husband clarifies in his reply brief that he does not do so.

transmutation statute must be met before the reimbursement provisions of section 2640 apply. We agree that there are both separate and community property interests in the [home] in proportion to the equity contributions." (*Bonvino, supra,* 241 Cal.App.4th at p. 1422.)

Wife relies on *In re Marriage of G.C. & R.W.* (2018) 23 Cal.App.5th 1, in which the Court of Appeal held a separate property contribution to the down payment was entitled to reimbursement only. (*Id.* at pp. 23-24.) The case is distinguishable because "the parties acquired the marital residence *as joint tenants* during marriage." (*Id.* at p. 19, italics added.) Therefore, a statutory presumption that property acquired in joint title during marriage is community property applied. (*Id.* at pp. 21, 23 [applying § 2581].) Unlike the presumption that property acquired during marriage is community property, the presumption about property acquired *in joint title* cannot be rebutted by tracing the property to a separate property source; instead, it can only be rebutted by documentary evidence of title or a written agreement. (*Id.* at pp. 21–22.)[8] Here, as in *Bonvino,* this presumption did not apply because the property was not acquired in joint title. (See *Bonvino, supra,* 241 Cal.App.4th at p. 1431 ["the [transmutation] requirements of section 852

[8] Section 2581 provides, "For the purpose of division of property on dissolution of marriage or legal separation of the parties, property acquired by the parties during marriage in joint form, including property held in tenancy in common, joint tenancy, or tenancy by the entirety, or as community property, is presumed to be community property. This presumption is a presumption affecting the burden of proof and may be rebutted by either of the following: [¶] (a) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property. [¶] (b) Proof that the parties have made a written agreement that the property is separate property."

must be met to transmute separate property to joint title before the joint title presumption of section 2581 applies"].)

Accordingly, we will reverse the trial court's characterization of the marital home as community property and subsequent division of the property, and remand for the trial court to divide the property proportionately to the separate and community contributions. Because Husband did not challenge on appeal the trial court's implied finding that all contributions to the purchase other than Husband's $74,496 separate property contribution were paid by the community, and Husband has therefore forfeited any such challenge, on remand all equity contributions above $74,496 shall be deemed to have been paid for by the community.[9]

DISPOSITION

The portion of the judgment concerning the marital home is reversed and remanded. On remand, the trial court shall divide the home proportionately as set forth in *In re Marriage of Bonvino* (2015) 241 Cal.App.4th 1411 and this opinion, based on Husband's $74,496 separate property contribution and all remaining equity contributions allocated to the community. Specifically, as in *Bonvino,* "The separate property share is the equity paid from separate property plus the appreciation attributable to separate property. [Citation.] ... The community's share is the equity paid by community funds and the appreciation attributable to community funds."

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[9] In her respondent's brief, Wife seeks sanctions on the ground that Husband's appeal is meritless and in bad faith. We have found Husband's appeal meritorious and would deny the request for sanctions even if Wife had complied with the required procedure for seeking sanctions. (*Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 858 ["We deny the request because [the respondent] has not filed a motion for sanctions along with a declaration supporting the amount sought."].)

(*Bonvino*, at p. 1427.) In all other respects, the judgment is affirmed. Husband is awarded his costs on appeal.

SIMONS, J.

We concur.

JACKSON, P. J.

BURNS, J.

(A164150)